

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

The purpose of the proposed rule making is to remove from the state air quality rules certain federal regulations that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) recently vacated. The federal programs vacated by the D.C. Court that are addressed in this rule making are the National Emission Standards for Hazardous Air Pollutants (NESHAP) for industrial, commercial and institutional boilers and process heaters and the NESHAP for brick and structural clay products manufacturing.

Over the last year and a half, the D.C. Court has issued rulings on several significant federal regulations promulgated by the U.S. Environmental Protection Agency (EPA). The D.C. Court found the regulations to be unauthorized under the federal Clean Air Act (CAA) or otherwise deficient. Although the D.C. Court vacated the federal regulations, the regulations were adopted by reference and therefore are still in effect and enforceable by the Department. The vacatur of these federal programs have elicited uncertainty and confusion for regulated industries and for state and local air quality agencies. In response to these vacatur, the Department is proposing to remove the now vacated federal regulations that were adopted by reference.

Section 112 of the CAA as amended in 1990 requires EPA to develop a list of source categories or subcategories that emit or have the potential to emit hazardous air pollutants (HAP) and further requires EPA to issue regulations for these source categories or subcategories. Section 112 also requires certain subject sources to meet maximum achievable control technology (MACT) for controlling HAP.

EPA issues the MACT standards for listed source categories and subcategories under the NESHAP program. EPA promulgated the NESHAP with MACT standards for brick and structural clay products manufacturing (Brick MACT) on May 16, 2003. EPA promulgated the NESHAP with MACT standards for institutional, commercial and industrial boilers and process heaters (Boiler MACT) on September 13, 2004. The Brick MACT and the Boiler MACT are currently adopted by reference into the existing state air quality rules.

Section 112 includes provisions to require MACT for major sources of HAP emissions in the event that EPA does not issue MACT standards. Under Section 112(g), if EPA has not set applicable emission limits for a category of listed HAP sources, construction of a new major source or modification of an existing major source in the source category may not occur unless the Administrator (or delegated state or local agency) determines on a case-by-case basis that the unit will meet standards equivalent to MACT. Under Section 112(j), if EPA fails to promulgate a standard for a listed category or subcategory by the dates established in the CAA, states must conduct a case-by-case MACT determination for each subject source category or subcategory and include the MACT requirements in each facility's Title V Permit. EPA has delegated authority to the Department to implement and enforce both Sections 112(g) and 112(j) in Iowa.

The D.C. Court issued its decision to vacate the Brick MACT on March 13, 2007, and issued the mandate making the decision final and effective on June 18, 2007. EPA did not appeal the decision to the U.S. Supreme Court. The D.C. Court's decision is available online at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200703/03-1202a.pdf>.

The D.C. Court issued its decision to vacate the Boiler MACT on June 8, 2007, and issued the mandate making the decision final and effective on July 30, 2007. EPA did not appeal the decision to the U.S. Supreme Court. The D.C. Court's decision is available online at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200706/04-1385a.pdf>.

Because of the D.C. Court vacatur, it now appears that Sections 112(g) and 112(j) apply to sources affected by the now vacated Boiler and Brick MACTs. Additionally, EPA has informally stated that it plans to repropose a Boiler MACT by July 31, 2009, and plans to repromulgate a final Boiler MACT standard by July 31, 2010.

At the Department's Air Quality Client Contact meeting on August 14, 2008, the Department discussed the implications of the Boiler MACT vacatur with stakeholders. At the meeting, the Department outlined a tentative, Section 112(j) time line for owners and operators of facilities with boilers and process heaters. The Department sent letters outlining the Department's plans to affected facilities on September 16, 2008.

Since only three brick and structural clay products manufacturing facilities exist in the state, the Department will be working with these facilities individually to develop the Section 112(j) requirements as needed.

During the rule-making process to remove the vacated federal regulations from state air quality rules, the Department will continue to closely monitor EPA and federal court actions, and, if needed, will alter its proposed rule-making and implementation strategies.

Item 1 amends paragraph 23.1(4)“dd,” which adopts by reference the federal provisions for the Boiler MACT. The amendment removes most of the explanatory text from the paragraph. The change is being made because the D.C. Court vacated the Boiler MACT. The amendment also includes a paragraph explaining the vacatur and indicating that the federal regulations under 40 CFR Part 63, Subpart DDDDD, are no longer adopted by reference. The paragraph is being preserved as a placeholder because EPA is required to repromulgate the Boiler MACT and may do so under the same federal subpart.

Item 2 amends paragraph 23.1(4)“dj,” which adopts by reference the federal provisions for the Brick MACT. The amendment removes most of the explanatory text from the paragraph. The change is being made because the D.C. Court vacated the Brick MACT. The amendment also includes a paragraph explaining the vacatur and indicating that the federal regulations under 40 CFR Part 63, Subpart JJJJJ, are no longer adopted by reference. The paragraph is being preserved as a placeholder because EPA is required to repromulgate the Brick MACT and may do so under the same federal subpart.

Any person may make written suggestions or comments on the proposed amendments on or before January 6, 2009. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515)242-5094, or by electronic mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Monday, January 5, 2009, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. At the public hearing, comments on the proposed amendments may be submitted orally or in writing. All comments must be received no later than Tuesday, January 6, 2009.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend paragraph **23.1(4)“dd”** as follows:

dd. Emission standards for industrial, commercial and institutional boilers and process heaters. These standards apply to new and existing major sources with industrial, commercial or institutional boilers and process heaters. ~~For purposes of these standards, a boiler is defined as an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water. Waste heat boilers, as defined in the federal rule, are excluded from these standards. For purposes of these standards, a process heater is defined as an~~

~~enclosed device using controlled flame, that is not a boiler, and the unit's primary purpose is to transfer heat indirectly to a process material (liquid, gas, or solid) or to a heat transfer material for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not directly come into contact with process materials. Process heaters do not include units used for comfort or space heat, food preparation for on-site consumption, or autoclaves. (Part 63, Subpart DDDDD)*~~

*As of [insert effective date of this amendment], Part 63, Subpart DDDDD, is not adopted by reference. On July 30, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its mandate vacating 40 CFR Part 63, Subpart DDDDD, in its entirety, and requiring EPA to repromulgate final standards for industrial, commercial or institutional boilers and process heaters at new and existing major sources.

ITEM 2. Amend paragraph **23.1(4)“dj”** as follows:

dj. Emission standards for hazardous air pollutants for brick and structural clay products manufacturing. These standards apply to new and existing brick and structural clay products manufacturing facilities that are, are located at, or are part of a major source of hazardous air pollutant emissions. ~~The brick and structural clay products manufacturing source category includes those facilities that manufacture brick including, but not limited to, face brick, structural brick, and brick pavers; clay pipe; roof tile; extruded floor and wall tile; or other extruded, dimensional clay products. Additional applicability criteria and exemptions from these standards are contained in the applicable subpart. (Part 63, Subpart JJJJ)*~~

*As of [insert effective date of this amendment], Part 63, Subpart JJJJ, is not adopted by reference. On June 18, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its mandate vacating 40 CFR Part 63, Subpart JJJJ, in its entirety, and requiring EPA to repromulgate final standards for brick and structural clay products manufacturing at new and existing major sources.